

CHAPTER NO. 640

SENATE BILL NO. 1847

By Elsea, Cooper, Dixon

Substituted for: House Bill No. 1818

By Givens, Walker

AN ACT To amend Tennessee Code Annotated, Title 43; Title 44; Title 47; Title 53 and Title 62, relative to fees and the Agricultural Regulatory Fund.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 43-1-701(b)(4), is amended by deleting the language "Chapter 9, Part 1" and substituting the language "Chapter 8, Part 3".

SECTION 2. Tennessee Code Annotated, Section 43-1-701(b), is amended by deleting the word "and" at the end of subdivision (4); by deleting the period at the end of subdivision (5) and substituting instead a semicolon; and by adding the following language as a new subdivision to be designated as follows:

(6) Title 44, Chapter 7, Part 4 relative to the animal diagnostic laboratory

SECTION 3. Tennessee Code Annotated, Section 43-1-701(d), is amended by deleting the language "account within the division of plant industries" and substituting instead the word "program".

SECTION 4. Tennessee Code Annotated, Section 43-1-701(f), is amended by deleting the second sentence and substituting the following language:

Subject to the foregoing requirement, moneys in the fund shall be expended at the direction of the commissioner only to defray the costs associated with implementing and effectuating the purposes of the statutes specified in Section 43-1-701.

SECTION 5. Tennessee Code Annotated, Section 43-1-701(f), is further amended by deleting the word "and" between the word "bureau" and the word "a" in the last sentence and adding the language "and other representatives of organizations that may be affected by the regulatory provisions of those programs and services specified in Section 43-1-701(b)" after the phrase "Tennessee pest control association".

SECTION 6. Tennessee Code Annotated, Section 43-1-702, is amended by deleting that section in its entirety.

SECTION 7. Tennessee Code Annotated, Section 43-1-703(a), is amended by deleting the word "and" between the words "fees" and "charter fees" in the first sentence and by deleting the period after the phrase "charter fees" and adding the following language:

and costs of the department as may be necessary to implement associated provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

SECTION 8. Tennessee Code Annotated, Section 43-1-703(a), is amended by adding the following language after the second sentence:

It is the intention of the General Assembly that the fees shall provide funding for implementation of the respective statutes and/or improvement of the performance of the department in carrying out its duties.

SECTION 9. Tennessee Code Annotated, Section 43-1-703(a), is amended by deleting the last sentence.

SECTION 10. Tennessee Code Annotated, Section 43-1-703(c), is amended by deleting the language "1994" and substituting instead the language "2002".

SECTION 11. Tennessee Code Annotated, Section 43-1-703(e)(1), is amended by deleting the first word in the first sentence and substituting instead the phrase "Unless otherwise stipulated in this part, if".

SECTION 12. Tennessee Code Annotated, Section 43-1-703(f)(6), is amended by deleting the phrase "one hundred dollars (\$100.00)" and substituting instead the phrase "two hundred dollars (\$200.00)".

SECTION 13. Tennessee Code Annotated, Section 43-1-703(f)(13), is amended by deleting the phrase "thirty dollars (\$30.00)" and substituting instead the phrase "equivalent to federal U.S. Department of Agriculture, Animal and Plant Health Inspection Service fees".

SECTION 14. Tennessee Code Annotated, Section 43-1-703(f), is amended by adding the following language as a new subdivision to be designated as follows:

(17) Animal diagnostic laboratory services including but not limited to biopsy, necropsy, cytology, parasitology, virology, bacteriology, toxicology, and immunology: one hundred and fifty dollars (\$150.00) per case or test.

SECTION 15. Tennessee Code Annotated, Section 43-1-704(a), is further amended by deleting the last sentence and substituting instead the following language:

It is the intention of the General Assembly that any fees authorized in this part become established by promulgation of rules and regulations within twelve (12) months of passage.

SECTION 16. Tennessee Code Annotated, Section 43-1-704, is amended by adding the following new subsection:

Beginning in fiscal year 2003-2004 and each year thereafter, the commissioner shall prepare a report that summarizes all program expenditures and revenues associated with implementation of those statutes listed in Tennessee Code Annotated, Section 43-3-701. The report shall be submitted to members of the committee specified in Section 43-1-701(f) as well as the Chairman of the House Agriculture Committee and the Chairman of the Senate Commerce, Labor and Agriculture Committee.

Beginning in 2007 and at least every five (5) years thereafter, the commissioner shall evaluate fee schedules associated with the department's regulatory services and recommend adjustments as may be appropriate. The report shall be submitted to the Chairman of the House Agriculture Committee and the Chairman of the Senate Commerce, Labor and Agriculture Committee.

SECTION 17. Tennessee Code Annotated, Section 44-7-403(a), is amended by deleting such subsection in its entirety and substituting instead the following:

(a) The commissioner is authorized to charge fees for services provided by the animal diagnostic laboratory pursuant to regulations promulgated by the commissioner; however, no fee will be charged for tests performed on livestock except for serologic testing for equine infectious anemia. For purposes of this part, "livestock" means all equine as well as animals which are being raised primarily for use as food or fiber for human utilization or consumption including, but not limited to, cattle, sheep, swine, goats and poultry.

SECTION 18. Tennessee Code Annotated, Section 47-26-806(a), is amended by deleting the language "ten dollars (\$10.00)" and substituting instead the language "eighteen dollars (\$18.00)".

SECTION 19. Tennessee Code Annotated, Section 47-26-909, is amended by adding the following language as a new subsection:

(19) Require a fee for tolerance testing, calibration, and certifying any standards and testing equipment as performed by the Department of Agriculture that is used in the performance of service and testing functions with respect to weighing and measuring devices pursuant to the requirements of this chapter and subject to the following standards and schedules:

(a) The following fees apply to all test weights which are tolerance tested in determining if the value is within an acceptable range and certified. If the weight error exceeds the applicable tolerance, adjustment shall be required. Weights which are rejected or condemned, shall be assessed a fee for the test performed:

| <u>Customary</u> | <u>Fee per unit without adjustment</u> | <u>Fee per unit with adjustment</u> |
|-------------------|--|---|
| 0 - 10 lbs | \$ 7.50 | \$10.00 |
| 11 - 50 lbs | \$ 7.50 | \$15.00 |
| 51 - 1000 lbs | \$15.00 | \$20.00 |
| 1001 - 2500 lbs | \$ 20.00 | \$40.00 |
| 2501 - 5000 lbs | \$ 25.00 | \$50.00 |
| <u>Metric</u> | <u>Fee per unit without adjustment</u> | <u>Fee per unit with adjustment</u> |
| 0 - 5 kgs | \$ 7.50 | \$10.00 |
| 6 - 30 kgs | \$ 7.50 | \$15.00 |
| 31 - 450 kgs | \$ 15.00 | \$20.00 |
| 451 - 1000 kgs | \$ 20.00 | \$40.00 |
| 1001 - 2000 kgs | \$ 25.00 | \$50.00 |

(b) The following fees apply to all weights that are calibrated to determine an actual value. Calibration means determining actual mass and apparent mass values. Tolerance testing fees shall be assessed on weights that can only be adjusted to a lower tolerance or are rejected for any reason:

| <u>Customary</u> | <u>Fee</u> | <u>Metric</u> | <u>Fee</u> |
|------------------|------------|---------------|------------|
| 0 - 50 lbs | \$ 20.00 | 0 - 30 kgs | \$ 20.00 |
| 51 - 1000 lbs | \$ 50.00 | 31 - 450 kgs | \$ 50.00 |

(c) The following fees apply to volumetric flasks, graduates, or test measures:

| <u>Customary</u> | <u>Fee</u> | <u>Metric</u> | <u>Fee</u> |
|------------------|-----------------------------------|---------------|---|
| 0 - 5 gal | \$ 15.00 | 0 - 20 liters | \$ 15.00 |
| 6 - 150 gal | | Add \$1.00 | 21 - 550 liters |
| | per each additional gallon. | | Add \$.25 per each additional liter. |

(d) The following fees apply to pressurized provers:

| <u>Customary</u> | <u>Fee</u> | <u>Metric</u> | <u>Fee</u> |
|------------------|--------------------------------------|----------------|------------------------------------|
| 0 - 150 gal | \$1.50 per gallon \$50.00 minimum | 0 - 550 liters | \$.50 per liter \$50.00 minimum |

(e) The following fees apply to tape measures and rigid rules:

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|-------------|-------------------------------|
| Set Up Fee | \$25.00 per instrument |
| Calibration | \$10.00 per calibration point |

(f) The following fees apply to liquid-in-glass thermometers:

| | |
|-------------|-------------------------------|
| Set Up Fee | \$25.00 per instrument |
| Calibration | \$30.00 per calibration point |

(g) Any special tests or weight cleaning shall be billed at the rate of \$50.00 per hour prorated to the nearest quarter of an hour, with a minimum of \$25.00.

(h) The department may refuse to accept for testing any weight or measure the department deems unsuited for its intended use.

SECTION 20. Tennessee Code Annotated, Section 47-26-909, is further amended by adding the following language as a new subsection:

(20) Require a fee for commercial weighing and measuring equipment pursuant to the requirements of this part and subject to the following schedule excluding where city or county weights and measures jurisdictions perform the service and testing functions with respect to the specific weighing and measuring equipment:

(A) Retail measuring equipment or pumps that dispense one product per nozzle delivering kerosene or motor fuel to individual users or vehicles: five dollars (\$5.00) per nozzle.

(B) Retail measuring equipment or pumps that dispense multiple products per nozzle delivering kerosene or motor fuel to individual users or vehicles: fifteen dollars (\$15.00) per nozzle.

(C) Liquid measuring equipment (or bulk meter) not defined in subsections (A) or (B): eighty-five dollars (\$85.00) providing for an annual inspection with prompt retests when minor maintenance allows for compliance.

(D) Liquid propane gas meter: eighty-five dollars (\$85.00) providing for an annual inspection with prompt retests when minor maintenance allows for compliance.

(E) Scale (capacity less than 2501 pounds): five dollars (\$5.00).

(F) Scale (capacity larger than 2500 pounds): seventy-five dollars (\$75.00).

SECTION 21. Tennessee Code Annotated, Section 47-26-1008, is amended by deleting the language "ten dollars (\$10.00)" and substituting instead the language "eighteen dollars (\$18.00)".

SECTION 22. Tennessee Code Annotated, Section 47-26-1110(a), is amended by deleting the language "ten dollars (\$10.00)" and substituting instead the language "eighteen dollars (\$18.00)"; and by deleting the language "twenty-five dollars (\$25.00)" and substituting instead the language "forty dollars (\$40.00)".

SECTION 23. Tennessee Code Annotated, Section 53-3-105(a), is amended by deleting the language "five dollars (\$5.00)" and substituting instead the language "eight dollars (\$8.00)".

SECTION 24. Tennessee Code Annotated, Section 53-3-105(b), is amended by deleting the language "five dollars (\$5.00)" and substituting instead the language "eight dollars (\$8.00)".

SECTION 25. Tennessee Code Annotated, Section 53-3-106(a)(1), is amended by deleting the following language:

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|--------------------------------------|----------|
| "Up to and including- 20,000 gallons | \$ 20.00 |
| 20,001- 100,000 gallons | 50.00 |
| 100,001- 500,000 gallons | 100.00 |
| 500,001-1,000,000 gallons | 150.00 |
| 1,000,001- 2,000,000 gallons | 200.00 |
| 2,000,001- and up gallons | 250.00" |

and substituting instead the language:

| | |
|--------------------------------------|----------|
| "Up to and including- 20,000 gallons | \$ 32.00 |
| 20,001- 100,000 gallons | 80.00 |
| 100,001- 500,000 gallon | 160.00 |

| | |
|------------------------------|---------|
| 500,001-1,000,000 gallons | 240.00 |
| 1,000,001- 2,000,000 gallons | 320.00 |
| 2,000,001- and up gallons | 400.00" |

SECTION 26. Tennessee Code Annotated, Section 53-3-106(a)(2)(A), is amended by deleting the following language:

| | |
|---|----------|
| "Up to and including - 10,000,000 lbs. milk | \$ 25.00 |
| 10,000,001 - 25,000,000 lbs. milk | 50.00 |
| 25,000,001 - 50,000,000 lbs. milk | 100.00 |
| 50,000,001 - 75,000,000 lbs. milk | 150.00 |
| 75,000,001 - 100,000,000 lbs. milk | 200.00 |
| 100,000,001 - and up lbs. milk | 250.00" |

and substituting instead the language:

| | |
|---|----------|
| "Up to and including - 10,000,000 lbs. milk | \$ 40.00 |
| 10,000,001 - 25,000,000 lbs. milk | 80.00 |
| 25,000,001 - 50,000,000 lbs. milk | 160.00 |
| 50,000,001 - 75,000,000 lbs. milk | 240.00 |
| 75,000,001 - 100,000,000 lbs. milk | 320.00 |
| 100,000,001 - and up lbs. milk | 400.00" |

SECTION 27. Tennessee Code Annotated, Section 53-3-106(a)(2)(B), is amended by deleting the following language:

| | |
|--|----------|
| "Up to and including - 400,000 lbs. BF | \$ 25.00 |
| 400,001 - 1,000,000 lbs. BF | 50.00 |
| 1,000,001 - 2,000,000 lbs. BF | 100.00 |
| 2,000,001 - 3,000,000 lbs. BF | 150.00 |
| 3,000,001 - 4,000,000 lbs. BF | 200.00 |
| 4,000,001 - and up lbs. BF | 250.00" |

and substituting instead the language:

| | |
|--|----------|
| "Up to and including - 400,000 lbs. BF | \$ 40.00 |
| 400,001 - 1,000,000 lbs. BF | 80.00 |
| 1,000,001 - 2,000,000 lbs. BF | 160.00 |
| 2,000,001 - 3,000,000 lbs. BF | 240.00 |
| 3,000,001 - 4,000,000 lbs. BF | 320.00 |
| 4,000,001 - and up lbs. BF | 400.00" |

SECTION 28. The last sentence of Tennessee Code Annotated, Section 53-3-106(a)(4), is amended by deleting the language "twenty-five dollars (\$25.00)" and substituting instead the language "forty dollars (\$40.00)"; and by deleting the language "two hundred fifty dollars (\$250.00)" and substituting instead the language "four hundred dollars (\$400.00)".

SECTION 29. Tennessee Code Annotated, Section 53-3-107(a)(1), is amended by deleting the language "ten dollars (\$10.00)" and substituting instead the language "sixteen dollars (\$16.00)"; and by deleting the language "two hundred dollars (\$200.00)" and substituting instead the language "three hundred and twenty dollars (\$320.00)".

SECTION 30. Tennessee Code Annotated, Section 53-1-102, is amended by adding the following definition:

"Certificate of Free Sale" means a certificate issued by the department which certifies that the manufacturer and/or distributor of the food, drug, or cosmetics listed in the document is duly authorized to manufacture or distribute the products and that the products can be sold freely to the public in the United States, and that the manufacturer or distributor is in substantial compliance with this chapter as determined by the commissioner.

SECTION 31. Tennessee Code Annotated, Section 53-1-208, is amended by adding the following new subsection:

(3) The commissioner shall require that a factory, warehouse, or establishment in which foods are manufactured, processed, packed or held for introduction into commerce must have a license where such factory, warehouse, or establishment is not otherwise required to be licensed pursuant to the provisions of this chapter. An annual license fee shall be required based upon the following categories:

(A) For establishments where foods are manufactured, processed, or packed, the fee shall be based on size of the establishment as follows:

Up to and including 1,000 square feet: fifty dollars (\$50.00)
From 1,001 through 2,000 square feet: one hundred dollars (\$100.00)
From 2,001 through 5,000 square feet: one hundred and fifty dollars (\$150.00)
From 5,001 through 10,000 square feet: two hundred dollars (\$200.00)
From 10,001 through 50,000 square feet: two hundred and fifty dollars (\$250.00)
From 50,001 through 100,000 square feet: three hundred dollars (\$300.00)
From 100,001 through 250,000 square feet: three hundred and fifty dollars (\$350.00)
Over 250,000 square feet: four hundred and fifty dollars (\$450.00)

(B) For warehouses where foods are held for introduction into commerce the fee shall be based on the size of the establishment as follows:

Up to and including 50,000 square feet: seventy-five dollars (\$75.00)
From 50,001 through 250,000 square feet: one hundred and twenty-five dollars (\$125.00)
From 250,001 through 500,000 square feet: two hundred dollars (\$200.00)
Over 500,000 square feet: three hundred dollars (\$300.00)

SECTION 32. Tennessee Code Annotated, Section 53-1-208, is further amended by adding the following new subsection:

(4) The commissioner shall require a fee of twenty-five dollars (\$25.00) for an initial certificate of free sale and ten dollars (\$10.00) for subsequent certificates relative to the same request.

SECTION 33. Tennessee Code Annotated, Section 43-1-703, is further amended by adding the following language as a new, appropriately designated subsection:

() The department shall have no authority to assess the fee imposed by subdivision (f)(6), the greenhouse plant certification fee, or any other licensure or plant certification fee established by this part against:

(1) Any person engaged in the production of tobacco seedlings; or

(2) Any farmer who produces and sells plants or seedlings in connection with such person's farming operations, but who is not primarily engaged in the business of producing and selling plants or seedlings, as determined by the commissioner.

SECTION 34. This act shall take effect upon becoming law, the public welfare requiring it.

PASSED: April 17, 2002


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 24th day of April 2002


DON SUNDQUIST, GOVERNOR